

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RONALD LEE DONALD

Claimant

VS.

CESSNA AIRCRAFT COMPANY

Self-Insured Respondent

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Docket No. 1,010,548

ORDER

Respondent requests review of the July 17, 2003 preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge (ALJ) found claimant's accidental injury arose out of and in the course of employment and therefore awarded temporary total disability benefits and medical treatment with Dr. Jacob Amrani.

The respondent requests review of whether the ALJ erred in finding the claimant's accidental injury arose out of and in the course of employment.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The claimant was employed as a welder for respondent. His job required that he stand at a table welding parts. But claimant had volunteered to help a painting crew during the plant shutdown in December 2002. In the morning on December 23, 2002, he helped lay masking tape on the floor of a new storage building. That job required that he frequently get up and down from the floor. Because the floor was too slick to paint, claimant then assisted with a shot ping machine to rough the floor for painting. Claimant initially transferred steel shot from a 50-pound bag into cans which he then used to refill the shot ping machine. As the job progressed the claimant would sweep up the used steel shot, place it in cans and refill the shot ping machine.

At the end of his work shift claimant went home and told his wife he was achy. He took a shower, ate and went to bed. Claimant awoke in the middle of the night with severe pain in his hip and down his right leg. Claimant was able to see Dr. Michael D. Grimes on December 24, 2002. Dr. Grimes medical records indicate claimant could not recall doing anything to cause the pain. But claimant testified he told the doctor that he had worked hard the previous day.

Claimant was to have worked another day during the Christmas holiday but instead called his supervisor on December 30, 2002, to tell him that he would not be able to work because of his back pain. Claimant testified that his supervisor kept questioning whether claimant had suffered a specific accident at work. Claimant testified that he told his supervisor that he had worked hard on December 23, 2002. Although claimant could not recall a specific incident, he felt that he had conveyed his impression that, more likely than not, he had injured his back at work.

Claimant's supervisor, Thomas Dreiling, testified that during the December 30th telephone call the claimant specifically denied hurting his back at work. But Mr. Dreiling agreed that he wondered if claimant had a work place injury after the call. Mr. Dreiling further stated that the work claimant performed on the 23rd was not heavy labor.

Claimant contacted the plant physician's office on January 6, 2003. The note of that conversation indicates in pertinent part:

EE (claimant) states that on Dec. 23rd his arms, legs, and back were sore, . . . EE stated the injury was a work comp injury EE can not site [sic] a specific injury, when ask [sic] why he feels the injury was work comp EE advises "well I work hard there and so it has to be work comp."¹

The claimant was referred by the plant physician to Dr. Paul S. Stein. Dr. Stein saw claimant on January 7, 2003. In a letter to claimant's counsel, the doctor stated:

I am writing in followup to our brief office conference today. The history given to me by Mr. Donald when I evaluated him on 1/7/03 reflected that he had done a fairly heavy day of work, had some soreness in the lower back, took a shower and went to bed, subsequently awakening in the middle of the night with severe pain in the right hip and leg. Based upon this history, it is more likely than not the case (within a reasonable degree of medical probability) that his work activity was causally related to the disk herniation.²

¹ P.H. Trans., Cl. Ex. 1.

² P.H. Trans., Cl. Ex. 3.

Respondent argues that claimant's personal physician's contemporaneous medical records do not corroborate claimant's allegations of the work-related accident because they do not contain a history of an accidental injury at work. Although those records indicate "He didn't do anything that caused this," claimant testified that he had told the doctor that he had worked hard the previous day.

Claimant was performing work that required him to frequently get up and down from the floor as he placed the masking tape on the floor. He then was required to transfer steel shot into the shot ping machine. This required more active work than his normal job duties standing at a table welding parts. Although claimant could not identify a specific sudden traumatic event, he testified he advised his doctor, his supervisor, the plant nurse as well as Dr. Stein that he had performed a heavy day of work on December 23, 2002. After that heavy day of work the claimant testified that he felt achy, went to bed and was awakened by the pain in his hip and leg.

Dr. Stein opined that, given claimant's history of onset of pain during the night after a hard day of work, that his disk herniation was causally related to his work activity. The ALJ concluded claimant, for preliminary hearing purposes, met his burden of proof that he suffered a work-related accident. The Board agrees and affirms.

As provided by the Workers Compensation Act, preliminary hearing findings are not final but subject to modification upon a full hearing on the claim.³

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge John D. Clark dated July 17, 2003, is affirmed.

IT IS SO ORDERED.

Dated this 30th day of September 2003.

BOARD MEMBER

c: Dale V. Slape, Attorney for Claimant
Edward D. Heath Jr., Attorney for Respondent
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

³ K.S.A. 44-534a(a)(2).